

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2012 MTWCC 10

WCC No. 2011-2699

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ANN SCHELLINGER f/n/a ANN UFFALUSSY

Petitioner

vs.

ST. PATRICK HOSPITAL AND HEALTH SCIENCES CENTER

Respondent/Insurer.

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ORDER DENYING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT AND  
GRANTING PETITIONER'S CROSS-MOTION FOR SUMMARY JUDGMENT

**Summary:** Respondent moved for summary judgment regarding Petitioner's request for medical benefits, arguing that because Petitioner had not "used" her benefits for 60 consecutive months, such benefits terminated pursuant to § 39-71-704(1)(e), MCA. Petitioner objected to Respondent's motion and cross-motivated for summary judgment, arguing that Respondent was on notice that medical bills existed for which Petitioner believed Respondent was liable.

**Held:** The statute of repose has not run in this matter, and Petitioner's claims for unpaid medical bills are not barred by § 39-71-704(1)(e), MCA.

**Topics:**

**Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated. 39-71-704.** The purpose of the statute of repose is to protect insurers by providing them timely notice that a claimant is making a claim for benefits. Petitioner continually sought treatment for her psychological and cognitive difficulties despite Respondent's denial of liability. After this Court ruled that Petitioner's condition was compensable, she sent Respondent two written demands for payment of her medical treatment. Petitioner's treatment and demands for payment were made within the 60-

month period afforded pursuant to § 39-71-704(1)(e), MCA. Therefore, her claim is not barred by the statute of repose.

**Benefits: Medical Benefits: Sixty (60) Month Limitation:** The purpose of the statute of repose is to protect insurers by providing them timely notice that a claimant is making a claim for benefits. Petitioner continually sought treatment for her psychological and cognitive difficulties despite Respondent's denial of liability. After this Court ruled that Petitioner's condition was compensable, she sent Respondent two written demands for payment of her medical treatment. Petitioner's treatment and demands for payment were made within the 60-month period afforded pursuant to § 39-71-704(1)(e), MCA. Therefore, her claim is not barred by the statute of repose.

¶ 1 Respondent St. Patrick Hospital and Health Sciences Center (SPH) moves this Court for summary judgment in its favor. SPH contends that Petitioner Ann Schellinger f/k/a Ann Uffalussy (Schellinger) is not entitled to the medical benefits she seeks because she did not use her benefits for a period of 60 consecutive months, thus barring any entitlement she may have had, pursuant to § 39-71-704(1)(e), MCA.<sup>1</sup>

¶ 2 Schellinger opposes SPH's motion and has filed a cross-motion for summary judgment in her favor. Schellinger argues that she requested that SPH pay certain medical bills within 60 months of the previous time SPH paid medical bills related to her claim, and while SPH failed to meet its obligation to do so, she nevertheless "used" her benefits within the meaning of § 39-71-704(1)(e), MCA.<sup>2</sup>

¶ 3 For the reasons set forth below, Respondent's motion is denied and Petitioner's cross-motion is granted.<sup>3</sup>

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<sup>1</sup> Respondent's Motion for Summary Judgment and Brief in Support (SPH's Opening Brief), Docket Item No. 11.

<sup>2</sup> Petitioner's Combined Brief in Opposition to Respondent's Motion for Summary Judgment, and in Support of Petitioner's Motion for Summary Judgment Re: Liability for Medical Benefits (Schellinger's Opening Brief), Docket Item No. 24.

<sup>3</sup> On November 14, 2011, the parties appeared on this matter; Petitioner's counsel appearing telephonically and Respondent's counsel in person. After hearing the arguments of each party and having read the briefs, the Court informed the parties that Petitioner's motion for summary judgment would be granted. (Minute Book Hearing No. 4344.) This written Order contains the facts and the Court's analysis in reaching its decision.

## STATEMENT OF UNDISPUTED FACTS

¶ 4 On November 5, 1997, Schellinger suffered an industrial back injury arising out of and in the course of her employment with SPH. Schellinger injured her back while assisting with transferring a patient.<sup>4</sup>

¶ 5 SPH accepted liability and paid medical benefits on the claim from the date of injury to February 7, 2003.<sup>5</sup>

¶ 6 Schellinger later asserted psychological and cognitive impairment relating to her industrial injury. SPH denied liability for this portion of the claim.<sup>6</sup> Schellinger petitioned this Court. The parties submitted the following issues for resolution:

Petitioner's entitlement to temporary total, temporary partial, permanent total and permanent partial disability benefits through the date of hearing.

Petitioner's entitlement to a penalty, reasonable attorney fees and costs. The determination of attorney fees and penalty will be held in abeyance by the Court . . . .<sup>7</sup>

¶ 7 On November 6, 2007, the Court entered its Findings of Fact, Conclusions of Law and Judgment, concluding that Schellinger had established a causal link between her cognitive impairment and her industrial injury,<sup>8</sup> that SPH had not met its burden of proof that events subsequent to Schellinger's industrial injury were the actual cause of her cognitive impairment,<sup>9</sup> and that she was entitled to temporary total disability benefits until such time as she is declared to be at maximum medical improvement for the cognitive impairment.<sup>10</sup>

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<sup>4</sup> SPH's Opening Brief, ¶ 1; Schellinger's Opening Brief, ¶ 2.

<sup>5</sup> SPH's Opening Brief, ¶ 3; Schellinger's Opening Brief, ¶ 19.

<sup>6</sup> SPH's Opening Brief, ¶¶ 4, 5; Schellinger's Opening Brief, ¶ 8.

<sup>7</sup> *Uffalussy v. St. Patrick Hosp. and Health Sciences Cent.*, 2007 MTWCC 45, ¶ 4.

<sup>8</sup> *Id.*, ¶ 78.

<sup>9</sup> *Id.*, ¶ 81.

<sup>10</sup> *Id.*, ¶ 82.

¶ 8 On December 20, 2007, Schellinger's counsel wrote to SPH's counsel, requesting they arrange to pay all past and continuing medical benefits related to her claim.<sup>11</sup>

¶ 9 On January 25, 2008, Schellinger's counsel again wrote to SPH's counsel, requesting payment of all medical benefits related to Schellinger's condition the Court found compensable.<sup>12</sup>

### ISSUE

¶ 10 The issue presented for the Court's determination is whether Schellinger is barred from seeking additional medical benefits for failing to use those benefits for a period of 60 consecutive months pursuant to the statute of repose, § 39-71-704(1)(e), MCA.

### DECISION

¶ 11 This case is governed by the 1997 version of the Montana Workers' Compensation Act since that was the law in effect at the time of Schellinger's industrial accident.<sup>13</sup>

¶ 12 Summary judgment is appropriate where undisputed facts demonstrate that a party is entitled to judgment as a matter of law.<sup>14</sup>

¶ 13 Section 39-71-704(1)(e), MCA, provides: "Except for the repair or replacement of a prosthesis furnished as a result of an industrial injury, the benefits provided for in this section terminate when they are not used for a period of 60 consecutive months."

¶ 14 It is undisputed that the last medical benefits provided to Schellinger and paid for by SPH were on February 7, 2003. It is also undisputed that SPH denied liability for Respondent's psychological and cognitive impairment while knowing Schellinger sought treatment for that condition during the intervening months leading up to this Court's decision of November 6, 2007, finding the condition compensable.<sup>15</sup>

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<sup>11</sup> SPH's Opening Brief, Ex. 4; Schellinger's Opening Brief, Ex. 4.

<sup>12</sup> SPH's Opening Brief, Ex. 6; Schellinger's Opening Brief, Ex. 5.

<sup>13</sup> *Buckman v. Montana Deaconess Hosp.*, 224 Mont. 318, 321, 730 P.2d 380, 382 (1986).

<sup>14</sup> *Lewis v. Nine Mile Mines, Inc.*, 268 Mont. 336, 340, 886 P.2d 912, 914 (1994).

<sup>15</sup> *Uffalussy v. St. Patrick Hosp. and Health Sciences Cent.*, 2007 MTWCC 45.

¶ 15 Within the 60-month period, Schellinger sent written demand letters to SPH on two separate occasions, seeking payment of her medical bills related to her psychological and cognitive treatments. These letters were forwarded on December 20, 2007, and January 25, 2008.

¶ 16 SPH cites to *Palmer v. Safeco*<sup>16</sup> and *Wiard v. Liberty Northwest Ins. Corp.*,<sup>17</sup> as authority in support of its position that Schellinger failed to satisfy the statute of repose. Neither case advances SPH's argument. In *Palmer*, I held that the statute of repose barred the claimant's claim for further medical benefits because he failed to use his benefits within the required statutory time period and the statute could not be tolled notwithstanding the claimant's contention that he was unaware that his medical difficulties stemmed from his industrial injury.<sup>18</sup> Similarly, in *Wiard*, it was undisputed that the claimant did not use his medical benefits for over 60 consecutive months, as required by the statute. This Court rejected various arguments advanced by the claimant as to why the statute should not apply, and held that the insurer was not liable for further medical benefits.

¶ 17 In this case, Schellinger continually sought treatment for her psychological and cognitive difficulties despite SPH's denial of liability. After this Court ruled that Schellinger's condition was compensable, she sent two written demands for payment of her medical treatment to SPH. Schellinger's medical treatment and demands for payment were both made within the 60-month period.

¶ 18 The purpose of the statute of repose is to protect insurers by providing them with timely notice that a claimant is making a claim for benefits. In this case, Schellinger received treatment and made her demands for payment within the 60 months afforded pursuant to § 39-71-704(1)(e), MCA. She has therefore satisfied the statute of repose.

### JUDGMENT

¶ 19 Respondent's motion for summary judgment is DENIED, and Petitioner's cross-motion for summary judgment is GRANTED.

¶ 20 The parties stipulated to bifurcation of the attorney fees and penalty issues and are ordered to notify the Court within 30 days whether they have resolved these issues or whether these issues will proceed to trial.

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<sup>16</sup> *Palmer v. Safeco*, 2006 MTWCC 44.

<sup>17</sup> *Wiard v. Liberty Northwest Ins. Corp.*, 2001 MTWCC 31 (*aff'd Wiard v. Liberty Northwest Ins. Corp.*, 2003 MT 295, 318 Mont. 132, 79 P.3d 281).

<sup>18</sup> *Palmer*, ¶ 12.

¶ 21 Any party to this dispute may have twenty days in which to request reconsideration from this Order Denying Respondent's Motion for Summary Judgment and Granting Petitioner's Cross-Motion for Summary Judgment.

¶ 22 DATED in Helena, Montana, this 23<sup>rd</sup> day of March, 2012

(SEAL)

/s/ JAMES JEREMIAH SHEA  
JUDGE

c: Rex Palmer  
Matthew J. Cuffe  
Submitted November 14, 2011